

**Introduced by Senator Denham**

February 9, 2009

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An act to add Chapter 7.8 (commencing with Section 3575) to Division 2 of the Business and Professions Code, relating to healing arts, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

**LEGISLATIVE COUNSEL'S DIGEST**

SB 132, as introduced, Denham. Polysomnographic technologists: sleep and wake disorders.

Existing law, the Physician Assistant Practice Act, provides for the licensure and regulation of physician assistants by the Physician Assistant Committee of the Medical Board of California. Existing law prescribes the medical services that may be performed by a physician assistant under the supervision of a licensed physician and surgeon.

Existing law, the Respiratory Care Practice Act, provides for the licensure and regulation of respiratory professionals by the Respiratory Care Board of California. Existing law defines the practice of respiratory therapy and prohibits its practice without a license issued by the board, subject to certain exceptions.

This bill would require the Medical Board of California to adopt regulations within a year after the effective date of this act, relative to the qualifications for certified polysomnographic technologists, including requiring those technologists to be credentialed by a board-approved national accrediting agency, to have graduated from a board-approved educational program, and to have passed a board-approved national certifying examination, with a specified exception for that examination requirement for a 3-year period. The bill would prohibit a person from using the title "certified

polysomnographic technologist” or engaging in the practice of polysomnography unless he or she undergoes a Department of Justice background check, as specified, is registered as a certified polysomnographic technologist, is supervised and directed by a licensed physician and surgeon, and meets certain other requirements. The bill would define polysomnography to mean the treatment, management, diagnostic testing, control, education, and care of patients with sleep and wake disorders, as specified. The bill would further require the board, within a year after the effective date of this act, to adopt regulations related to the employment of polysomnographic technicians and trainees.

This bill would require polysomnographic technologists to register with the Medical Board of California for a fee to be fixed by the board at no more than \$100, and to renew their registration biennially for a fee of no more than \$50. The bill would require the deposit of those fees in the Contingent Fund of the Medical Board of California, a continuously appropriated fund, thereby making an appropriation. The bill would further set forth specified disciplinary standards and procedures.

This bill would declare that it is to take effect immediately as an urgency statute.

Vote:  $\frac{2}{3}$ . Appropriation: yes. Fiscal committee: yes.

State-mandated local program: no.

*The people of the State of California do enact as follows:*

1 SECTION 1. Chapter 7.8 (commencing with Section 3575) is  
2 added to Division 2 of the Business and Professions Code, to read:

3  
4 CHAPTER 7.8. POLYSOMNOGRAPHIC TECHNOLOGISTS

5  
6 3575. (a) For the purposes of this chapter, the following  
7 definitions shall apply:

8 (1) “Board” means the Medical Board of California.

9 (2) “Polysomnography” means the treatment, management,  
10 diagnostic testing, control, education, and care of patients with  
11 sleep and wake disorders. Polysomnography shall include, but not  
12 be limited to, the process of analysis, monitoring, and recording  
13 of physiologic data during sleep and wakefulness to assist in the  
14 treatment of disorders, syndromes, and dysfunctions that are

1 sleep-related, manifest during sleep, or disrupt normal sleep  
2 activities. Polysomnography shall also include, but not be limited  
3 to, the therapeutic and diagnostic use of oxygen, the use of positive  
4 airway pressure including continuous positive airway pressure  
5 (CPAP) and bilevel modalities, adaptive servo-ventilation, and  
6 maintenance of nasal and oral airways that do not extend into the  
7 trachea.

8 (3) “Supervision” means that the supervising physician and  
9 surgeon shall remain available, either in person or through  
10 telephonic or electronic means, at the time that the  
11 polysomnographic services are provided.

12 (b) Within one year after the effective date of this chapter, the  
13 board shall promulgate regulations relative to the qualifications  
14 for the registration of individuals as certified polysomnographic  
15 technologists, polysomnographic technicians, and  
16 polysomnographic trainees. The qualifications for a certified  
17 polysomnographic technologist shall include all of the following:

18 (1) He or she shall have valid, current credentials as a  
19 polysomnographic technologist issued by a national accrediting  
20 agency approved by the board.

21 (2) He or she shall have graduated from a polysomnographic  
22 educational program that has been approved by the board.

23 (3) He or she shall have passed a national certifying examination  
24 that has been approved by the board, or in the alternative, may  
25 submit proof to the board that he or she has been practicing  
26 polysomnography for at least five years in a manner that is  
27 acceptable to the board. However, beginning three years after the  
28 effective date of this chapter, all individuals seeking to obtain  
29 certification as a polysomnographic technologist shall have passed  
30 a national certifying examination that has been approved by the  
31 board.

32 (c) In accordance with Section 144, any person seeking  
33 registration from the board as a certified polysomnographic  
34 technologist, a polysomnographic technician, or a  
35 polysomnographic trainee shall be subject to a state and federal  
36 level criminal offender record information search conducted  
37 through the Department of Justice as specified in paragraphs (1)  
38 to (5), inclusive, of this subdivision.

39 (1) The board shall submit to the Department of Justice  
40 fingerprint images and related information required by the

1 Department of Justice of all polysomnographic technologist,  
2 technician, or trainee certification candidates for the purposes of  
3 obtaining information as to the existence and content of a record  
4 of state or federal convictions and state or federal arrests and also  
5 information as to the existence and content of a record of state or  
6 federal arrests for which the Department of Justice establishes that  
7 the person is free on bail or on his or her recognizance pending  
8 trial or appeal.

9 (2) When received, the Department of Justice shall forward to  
10 the Federal Bureau of Investigation requests for federal summary  
11 criminal history information received pursuant to this subdivision.  
12 The Department of Justice shall review the information returned  
13 from the Federal Bureau of Investigation and compile and  
14 disseminate a response to the board.

15 (3) The Department of Justice shall provide a response to the  
16 board pursuant to paragraph (1) of subdivision (p) of Section 11105  
17 of the Penal Code.

18 (4) The board shall request from the Department of Justice  
19 subsequent arrest notification service, pursuant to Section 11105.2  
20 of the Penal Code, for persons described in this subdivision.

21 (5) The Department of Justice shall charge a fee sufficient to  
22 cover the cost of processing the request described in this  
23 subdivision. The individual seeking registration shall be responsible  
24 for this cost.

25 (d) Notwithstanding any other provision of law, an individual  
26 may use the title “certified polysomnographic technologist” and  
27 may engage in the practice of polysomnography only under the  
28 following circumstances:

29 (1) He or she is registered with the board.

30 (2) He or she works under the supervision and direction of a  
31 licensed physician and surgeon.

32 (3) He or she meets the requirements of this chapter.

33 (e) Within one year after the effective date of this chapter, the  
34 board shall adopt regulations that establish the means and  
35 circumstances in which a licensed physician and surgeon may  
36 employ polysomnographic technicians and polysomnographic  
37 trainees. The board may also adopt regulations specifying the scope  
38 of services that may be provided by a polysomnographic technician  
39 or polysomnographic trainee. Any regulation adopted pursuant to  
40 this section may specify the level of supervision that

1 polysomnographic technicians and trainees are required to have  
2 when working under the supervision of a certified  
3 polysomnographic technologist or licensed health care professional.

4 (f) This section shall not apply to California licensed allied  
5 health professionals, including, but not limited to, respiratory care  
6 practitioners, working within the scope of practice of their license.

7 (g) Nothing in this chapter shall be interpreted to authorize a  
8 polysomnographic technologist, technician, or trainee to treat,  
9 manage, control, educate, or care for patients other than those with  
10 sleep disorders or to provide diagnostic testing for patients other  
11 than those with suspected sleep disorders.

12 3576. (a) A registration under this chapter may be denied,  
13 suspended, revoked, or otherwise subjected to discipline for any  
14 of the following by the holder:

15 (1) Incompetence, gross negligence, or repeated similar  
16 negligent acts performed by the registrant.

17 (2) An act of dishonesty or fraud.

18 (3) Committing any act or being convicted of a crime  
19 constituting grounds for denial of licensure or registration under  
20 Section 480.

21 (4) Violating or attempting to violate any provision of this  
22 chapter or any regulation adopted under this chapter.

23 (b) Proceedings under this section shall be conducted in  
24 accordance with Chapter 5 (commencing with Section 11500) of  
25 Part 1 of Division 3 of Title 2 of the Government Code, and the  
26 board shall have all powers granted therein.

27 3577. (a) Each person to whom registration is granted under  
28 this chapter shall pay into the Contingent Fund of the Medical  
29 Board of California a fee to be fixed by the board at a sum not in  
30 excess of one hundred dollars (\$100).

31 (b) The registration shall expire after two years. The registration  
32 may be renewed biennially at a fee which shall be paid into the  
33 Contingent Fund of the Medical Board of California to be fixed  
34 by the board at a sum not in excess of fifty dollars (\$50).

35 (c) The money in the Contingent Fund of the Medical Board of  
36 California that is collected pursuant to this section shall be used  
37 for the administration of this chapter.

38 3578. Notwithstanding any other provision of law, nothing in  
39 this chapter shall prohibit a clinic or health facility licensed  
40 pursuant to Division 2 (commencing with Section 1200) of the

1 Health and Safety Code from employing a certified  
2 polysomnographic technologist.

3 SEC. 2. This act is an urgency statute necessary for the  
4 immediate preservation of the public peace, health, or safety within  
5 the meaning of Article IV of the Constitution and shall go into  
6 immediate effect. The facts constituting the necessity are:

7 In order to protect the health and safety of the general public by  
8 providing needed qualifications for, and oversight of, the practice  
9 of polysomnography at the earliest possible time, it is necessary  
10 that this act take effect immediately.